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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. [illegible] 23

WILSON AND CO., INC, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

No. [illegible] 24

WILSON & CO., INC., OF KANSAS, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

No. 780 25

T. M. SINCLAIR & COMPANY, LIMITED,
A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION.

J. HARRY COVINGTON,
DEAN G. ACHESON,
PAUL E. SHORB,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 778

WILSON AND CO., INC, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

No. 779

WILSON & CO., INC., OF KANSAS, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

No. 780

T. M. SINCLAIR & COMPANY, LIMITED,
A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION.

This reply to the brief filed by the United States in opposition to the petition for certiorari seems necessary in order to avoid a possible misapprehension.

The opposition to certiorari by the United States seems to be based largely upon the fact that, notwithstanding the square conflict of results between the instant case and *Cudahy Bros. Co.* v. *LaBudde*, 92 F. (2d) 937 (C. C. A. 7th), certiorari denied, 303 U. S. 659, the decisions are in accord that Title IV and not Title VII is applicable to these and like clams for refund. The brief in opposition also states (ftn. 5, page 6) that "If certiorari should be granted" in this case, the Government reserves the right to urge that the claims properly fall under Title VII instead of Title IV. These two statements, taken together with the fact of opposition to certiorari, might seem to indicate that the United States accepts the concluson reached by both the *Cudahy* and the instant cases—that the taxpayers are entitled to refund in full (although the Court of Claims held that it had no power to compel the result).

That implication is not in accord with the facts. The officials of the Bureau of Internal Revenue have advised these taxpayers that it does not accept these decisions as determinative, and that it will not now make refunds under Title IV.

Notwithstanding the unanimity of decision to the contrary, the Bureau is still of opinion that claimants such as these taxpayers fall under Title VII, and must prove their claims thereunder, with the concomitant burdens and difficulties of proof. Consequently, taxpayers will be able to obtain refunds, notwithstanding the judicial decisions unanimously in their favor, only after a decision by this Court, which will, of course, be accepted as conclusive by the Bureau of Internal Revenue.

We submit, therefore, that the petition for certiorari should be granted. With respect to the Government's argument that the *Cudahy* decision is not in conflict with the instant one, it is sufficient to point out that the question upon which the two cases are in conflict was necessarily present in the *Cudahy* case since it was a *jurisdictional* objection which could not be waived. Indeed, the instant case

illustrates the point perfectly—the point was likewise not raised by the Government in the Court of Claims; it was taken up *suo motu* by the Court. Moreover, the point was specifically raised and decided against the Government in *Neuss, Hesslein & Co., Inc.* v. *United States,* 30 F. Supp. 595 (S. D. N. Y.).

Respectfully submitted,

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April, 1940.